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April 16, 2004

To: Program of All-Inclusive Care for the Elderly Providers

Subject: Long Term Care (LTC)  
Information Letter No. 04-14  
Repeal of Chapter 48, Subchapter G, Program of All-Inclusive Care for the Elderly, and Adoption of Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly, **Effective March 24, 2004**

Effective March 23, 2004, the Texas Department of Human Services (DHS) repealed the provider agency rules for the Program of All-Inclusive Care for the Elderly (PACE), which were found in 40 Texas Administrative Code (TAC), Chapter 48, Subchapter G. The provider agency rules for PACE were re-adopted in 40 TAC Chapter 60, Program of All-Inclusive Care for the Elderly.

These rules:

- contain minor terminology changes to make them more consistent with other Community Care rules; and
- implement plain English terminology.

A copy of these rules is attached to this letter. You may also access these rules through the Secretary of State's TAC Viewer at <http://www.sos.state.tx.us/tac/index.shtml> or through the Community Care Website at <http://www.dhs.state.tx.us/programs/communitycare/rules/index.html>.

Please contact Gerardo Cantu at 512-438-3693 for clarification.

Sincerely,

*Signature on file*

Marilyn Eaton  
Lead Director  
Long Term Care Services

ME:ck

Attachment

January 20, 2003 (3R269)

Title 40, Social Services and Assistance, Part 1, Texas Department of Human Services  
Chapter 48, Community Care for Aged and Disabled

The Texas Department of Human Services (DHS) adopts the repeal of Subchapter G, §§48.2801-48.2807, and 48.2812, without changes to the proposed text published in the September 5, 2003, issue of the Texas Register (28 TexReg 7649).

The repeals were undertaken as part of a larger DHS project to rewrite the rules governing Programs of All-Inclusive Care for the Elderly (PACE) in plain English and to place PACE rules in their own chapter, making them easier for provider agencies, facilities, and the public to access, use, and understand. The new PACE rules in Chapter 60 are adopted elsewhere in this issue of the Texas Register.

DHS received no comments regarding adoption of the repeals.

Title 40, Social Services and Assistance, Part 1, Texas Department of Human Services  
Chapter 48, Community Care for Aged and Disabled  
Subchapter G, Program for All-inclusive Care for the Elderly (PACE)  
TAC Section Number(s) §§48.2801-48.2807, 48.2812

Final Action

200305432      TRD Docket Number  
For Proposed Action

9/5/03      Proposed Action  
Publication Date

X      Repeal  
X      Adopted Without Changes

Effective Date:

X      20 Days After Filing

The repeals are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§48.2801. Introduction.  
§48.2802. Definitions.  
§48.2803. Client Eligibility Criteria.  
§48.2804. Risk-based Model.  
§48.2805. Program Benefits.  
§48.2806. Client's Right to Appeal.  
§48.2807. Provider Claims Payment.  
§48.2812. Provider Requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on \_\_\_\_\_.

Title 40, Social Services and Assistance, Part 1, Texas Department of Human Services  
Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE)

The Texas Department of Human Services (DHS) adopts new §§60.2, 60.4, 60.6, 60.8, 60.10, 60.12, 60.14, 60.16, 60.18, 60.20, 60.22, 60.24, and 60.26, in its Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE) chapter. DHS adopts new §60.16 with changes to the proposed text published in the September 5, 2003, issue of the Texas Register (28 TexReg 7650). DHS adopts new §§60.2, 60.4, 60.6, 60.8, 60.10, 60.12, 60.14, 60.18, 60.20, 60.22, 60.24, and 60.26 without changes to the proposed text.

The new sections were undertaken as part of a larger DHS project to rewrite the rules governing Programs of All-Inclusive Care for the Elderly (PACE) in plain English and to place PACE rules in their own chapter, making them easier for provider agencies, facilities, and the public to access, use, and understand. The repeals of PACE rules in Chapter 48, Subchapter G, are located elsewhere in this issue of the Texas Register. In addition, DHS implemented new policy in §§60.6, 60.12(d), 60.18, 60.20, and 60.24(c) and (d) to be in compliance with Medicaid state plan program requirements. Effective October 1, 2003, PACE began operation as a Medicaid state plan program.

DHS received one written comment from the Centers for Medicare and Medicaid Services. A summary of the comment and DHS's response follow.

Comment: Concerning §60.16, a comment was received that the proposed rule does not comply with federal PACE regulations that mandate that the state's administering agency must reassess, on at least an annual basis, whether a PACE participant meets the state's medical necessity criteria for nursing home care, and whether the state can deem continued eligibility.

Response: DHS agrees and revised the rule to comply with 42 Code of Federal Regulations §460.160.

Title 40, Social Services and Assistance, Part 1, Texas Department of Human Services  
Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE)  
TAC Section Number(s) §§60.2, 60.4, 60.6, 60.8, 60.10, 60.12, 60.14, 60.16, 60.18, 60.20, 60.22, 60.24, 60.26.

Final Action

200305431 TRD Docket Number  
For Proposed Action

9/5/03 Proposed Action  
Publication Date

X New  
X Adopted With Changes

Effective Date:

X 20 Days After Filing

The new sections are adopted under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new sections affect the Human Resources Code, §§22.0001-22.040 and §§32.001-32.067.

§60.2. Purpose. This chapter establishes the requirements for agencies contracting to provide services to eligible elderly clients through the Texas Department of Human Services' Programs of All-Inclusive Care for the Elderly (PACE).

#### §60.4. Introduction.

(a) Programs of All-Inclusive Care for the Elderly (PACE) provide community-based acute and long-term care services to persons who meet the medical requirements for nursing facility care and can be served safely in the community. PACE is jointly funded and administered by the Centers for Medicare and Medicaid Services and the state of Texas. The PACE provider agency receives a monthly capitation payment and is at full risk for the delivery of all services needed by the client.

(b) Rules governing the operation of the PACE program are contained in 42 Code of Federal Regulations, Part 460. These regulations, as currently written or amended in the future, are incorporated by reference as the rule base for operating the PACE program in Texas.

§60.6. Definitions. The words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise.

(1) Capitation--The uniform per client monthly amount that the Texas Department of Human Services (DHS) pays to a provider agency.

(2) CFR--The Code of Federal Regulations.

(3) CMS--The Centers for Medicare and Medicaid Services.

(4) DHS--The Texas Department of Human Services.

(5) Interdisciplinary Team (IDT)--The IDT is a team of persons who interact and collaborate to assess clients and plan for their care. The IDT must include the client's primary care physician, registered nurse, Programs of All-Inclusive Care for the Elderly (PACE) center director, social worker, physical therapist, occupational therapist, activities director, dietician, home care coordinator, personal care attendant or his or her representative, and driver or his or her representative.

(6) PACE--Programs of All-Inclusive Care for the Elderly.

(7) Program agreement--The three-party agreement between the PACE provider agency, CMS, and DHS.

(8) Provider agency--The agency that delivers required PACE services under contract with DHS.

(9) Respite services--These are services provided to individuals unable to care for themselves, because of the absence or need for relief of those persons normally providing the care.

(10) Service area--The geographic area served by the provider agency, according to its program agreement.

(11) State Administering Agency (SAA)--The Texas Department of Human Services.

#### §60.8. Contracting Requirements.

(a) General contracting requirements. The provider agency must comply with provisions of this chapter, Chapter 49 of this title (relating to Contracting for Community Care Services), and the regulations in 42 Code of Federal Regulations, Part 460.

(b) Licensure. The provider agency must be licensed as an adult day care center.

(c) Regulations. The provider agency must meet all applicable local, state, and federal regulations.

§60.10. Inquiry Log. The provider agency must maintain an inquiry log of all individuals requesting Programs of All-Inclusive Care for the Elderly (PACE) services. The log must include the:

- (1) type of contact;
- (2) date of contact;
- (3) name and phone number of the individual requesting services;
- (4) name and address of the potential client; and
- (5) date of enrollment, or the reason for denial if the individual is not enrolled.

§60.12. Client Eligibility Criteria.

(a) To be eligible for participation the applicant must:

- (1) be 55 years old or older;
- (2) meet the medical necessity criteria for nursing facility care in accordance with §19.2409 (relating to General Qualifications for At-Risk Assessments and Medical Necessity Determinations) and §19.2410 of this title (relating to Criteria Specific to a Medical Necessity Determination);
- (3) live in a Programs of All-Inclusive Care for the Elderly (PACE) service area; and
- (4) be determined by the PACE Interdisciplinary Team (IDT) as able to be safely served in the community.

(b) To be eligible for Medicaid capitated payment the applicant must be eligible for full Medicaid benefits through one of the following methods:

- (1) be eligible for Supplemental Security Income (SSI) benefits;
- (2) have been eligible for and received SSI benefits, and continue to be eligible for Medicaid as a result of coverage mandated by federal law; or
- (3) be eligible for Medicaid benefits, if institutionalized.

(c) To obtain and maintain eligibility, the client must agree to accept the provider agency and its contractors as the client's only service provider.

(d) If the provider agency denies enrollment because the IDT determines that the applicant cannot be served safely in the community, the agency must:

- (1) notify the applicant in writing of the reason for the denial;
- (2) refer the individual to alternative services, as appropriate;
- (3) maintain supporting documentation for the denial; and
- (4) notify the Centers for Medicare and Medicaid Services and the Texas Department of Human Services of the denial and make the supporting documentation available for review.

§60.14. Living Arrangements. Programs of All-Inclusive Care for the Elderly (PACE) clients must reside in:

- (1) their own home;
- (2) a relative's home;
- (3) a licensed assisted living facility;
- (4) a licensed nursing facility; or
- (5) an adult foster care home that contracts with the Texas Department of Human Services.

§60.16. Medical Necessity Assessments.

(a) The provider agency must complete a Client Assessment and Review Evaluation (CARE) form based on the client's total needs.

(b) The provider agency must electronically transmit or mail the CARE form to the agency with which the Texas Department of Human Services (DHS) contracts for medical necessity determinations.

(c) The provider agency must enroll any eligible applicant within 60 calendar days of the date

of the CARE form.

(d) The provider agency must complete another CARE form and submit it to the agency with which DHS contracts for medical necessity determinations 12 months after the initial assessment.

(1) If the client meets the state's medical necessity criteria and the client has an irreversible or progressive diagnosis, or a terminal illness that could reasonably be expected to result in death in the next six months, and DHS determines that there is no reasonable expectation of improvement or significant change in the client's condition because of severity of a chronic condition or the degree of impairment of functional capacity, DHS will permanently waive the annual recertification requirement and the client may be deemed to be continually eligible for PACE. The CARE form must have sufficient documentation to substantiate the client's prognosis and the client's functional capacity.

(2) In addition, if DHS determines that a PACE client no longer meets the medical necessity criteria for nursing facility care, the client may be deemed to continue to be eligible for PACE until the next annual reassessment, if, in the absence of PACE services, it is reasonable to expect that the client would meet the nursing facility medical necessity criteria within the next six months.

(e) The provider agency's licensed nurse must complete the CARE form for the provider agency. The licensed nurse must be registered with the agency with which DHS contracts for medical necessity determinations as having, within the last two years, received and passed a Texas Health and Human Services Commission approved training on the Texas Index for Level of Effort (TILE) assessment.

§60.18. Program Benefits. A provider agency must provide a client the services, listed in 42 Code of Federal Regulations §460.92, that are approved by the Interdisciplinary Team.

§60.20. Right to Appeal.

(a) Internal appeal.

(1) Any client who is denied program services is entitled to an appeal through the provider agency.

(2) If the client also chooses to file an external appeal, the provider agency must assist the client in filing an external appeal.

(b) External appeals. Any client covered by:

(1) Medicaid may file an appeal through the Texas Medicaid hearing process; or

(2) Medicare, but not Medicaid, may file an appeal through the Centers for Medicare and Medicaid Services hearing process.

§60.22. Medicaid Capitation Payments.

(a) The provider agency must accept the Medicaid capitation payment as payment in full for all services to a Medicaid eligible client.

(b) If the client is also a Medicare beneficiary, the Centers for Medicare and Medicaid Services will also pay a Medicare capitation payment to the provider agency.

(c) An exception to subsection (a) of this section occurs when a client enters a nursing facility and the client has applied income. To receive this exception:

(1) the provider agency must collect the client's applied income, unless the purpose of the stay is for the client to receive respite care; and

(2) the applied income must be determined in accordance with §§15.100, 15.450, 15.501-15.503, and 15.506 of this title (relating to Definitions; General Principles Concerning Income; Vendor Living Arrangements; Allowable Deductions; Protection of Spousal Income and

Resources; and Mandatory Payroll Deductions from Earned Income).

§60.24. Enrollment and Disenrollment.

- (a) The provider agency determines whether the applicant meets enrollment requirements.
- (b) The enrollment effective date is the first day of the month after the provider agency receives the signed enrollment form.
- (c) The client may voluntarily disenroll from Programs of All-Inclusive Care for the Elderly (PACE) at any time, but the effective date of disenrollment must be the last day of the month.
- (d) The provider agency may recommend involuntary disenrollment of a client for the reasons described in 42 Code of Federal Regulations §460.164. To involuntarily disenroll a client:
  - (1) the documentation of the recommendation must be sent to the PACE program manager in the Texas Department of Human Services (DHS) state office; and
  - (2) the disenrollment becomes effective only when DHS confirms the provider agency adequately documented acceptable grounds for disenrollment.

§60.26. Data Collection and Reporting. The provider agency must:

- (1) collect and enter data into the DataPACE system;
- (2) generate and maintain monthly reports from the DataPACE system; and
- (3) make the reports available to the Texas Department of Human Services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on \_\_\_\_\_.